

Annex 1

Enforcement Policy

1.0 Introduction

1.1 Buckinghamshire County Council and Surrey County Council operate a joint trading standards service (The Trading Standards Service). This policy sets out what businesses and others being regulated can expect from Buckinghamshire & Surrey Trading Standards enforcement officers

1.2 The Trading Standards Service aims to create an environment of **confident consumers and trusted traders** by providing advice and guidance to consumers and businesses. However there will be occasions when a range of different actions may be necessary to deal with cases where trading standards laws have been breached by businesses or others.

1.3 This enforcement policy helps to promote efficient and effective approaches to regulatory inspection and enforcement, which improve regulatory outcomes without imposing unnecessary regulatory burdens including consideration for social, environmental and economic outcomes.

1.4 The Trading Standards Service recognises that the vast majority of businesses that operate within Buckinghamshire and Surrey are honest, legitimate enterprises. The Trading Standards Service will work with those businesses, helping and encouraging them to understand and comply with their regulatory obligations.

1.5 The main purpose of the Trading Standards Service enforcement activities is to protect the public and legitimate businesses. To achieve this aim we will undertake to regulate businesses and others in a fair, practical and consistent manner helping to support or enable local and national economic growth for compliant businesses and other regulated entities.

1.6 The Trading Standards Service subscribes to the principles and objectives of the statutory Code of Practice for Regulators (the Code) made under the Legislative and Regulatory Reform Act 2006. We believe that all enforcement should be risk based and proportionate.

1.7 In certain instances we may conclude that a provision in the code is either not relevant or is outweighed by another provision. We will ensure that any decision to depart from the code is properly reasoned, evidence based and documented.

1.8 Included in the term enforcement are the ways we deal with businesses and others in an advisory capacity in addition to licensing and formal enforcement action.

1.9 The Trading Standards Service aims to apply the law in a proportionate and transparent manner and in all our choices of enforcement actions we will comply with the principles of the regulators code.

2.0 Enforcement Policy

2.1 The Trading Standards Service has adopted the principles of the National Intelligence Model and operates an intelligence led approach to enforcement activities.

2.2 Following the National Trading Standards Board (NTSB) Intelligence Operating Model (IOM) Service demand is managed through a tactical tasking process designed to target resources effectively and focus activity on those businesses who cause the greatest harm to consumers and legitimate business. Regular tasking meetings ensure a timely response to emerging issues and efficient monitoring of actions taken to deal with rogue traders and businesses causing the most consumer and business detriment.

2.3 Where an issue is identified and investigated, consideration will be given to the most appropriate and proportionate intervention for dealing with the case.

2.4 A range of sanctions will be considered according to the associated risk and seriousness and of the matter.

2.5 Options include:

- Securing an undertaking from the business that they will comply with their legal obligations
- Commencing action in the civil courts under the Enterprise Act 2002 to seek an enforcement order
- Issuing cautions and warnings
- Prosecuting offenders in the criminal courts

- Restraint, Confiscation and Forfeiture of assets under the Proceeds of Crime Act 2002
- Seizing goods, documents or other items that may be required as evidence, for testing or for other lawful purposes
- Issuing Suspension Notices, Improvement Notices or other such statutory documents
- Issuing of Penalty Charge Notices
- Instituting a license review (e.g. alcohol sales)
- Instituting a product recall
- Issuing financial penalties

2.6 The aim of any intervention is to:

- Change the behaviour of the offender;
- Eliminate any financial gain or benefit from non-compliance;
- Be responsive and consider what is appropriate for the particular offender and regulatory issues which can include punishment and the public stigma that could be associated with a criminal conviction;
- Be proportionate to the nature of the offence and the harm caused;
- Address the harm caused by regulatory non-compliance where appropriate; and
- To deter future non-compliance

2.7 Consideration will be given to matters which aggravate or mitigate the seriousness of the case so that the most appropriate and proportionate method of disposal is chosen.

3.0 Aggravating factors

- The impact, or potential impact, of the offence is so serious that prosecution is the only suitable method for disposal
- Whether the offence continued over a long period of time or involved a series of offences against the same or different victims
- Degree of pre planning
- Age and/or vulnerability of the victim(s)
- Amount of gain for the offender or the amount of loss to the victim relative to the victim's status
- Impact of the crime on the victim
- Prevalence of the offence and its impact on the community
- Where there is any evidence of the crime being motivated by hate (hate crimes) i.e. racial hatred

- Any attempt by the offender to conceal his identity, whether directly or indirectly, such that the victim and/or investigating agencies, cannot easily identify or trace the person.
- Lack of remorse
- The offender's antecedents including previous advice, warnings, cautions and convictions
- There is evidence of significant and/or continuing consumer or public detriment
- There is significant risk to public health and safety or to the environment
- The offender has acted fraudulently, or is reckless or negligent in their activities.
- The offender deliberately obstructs an officer.
- The offender disregards the needs for animal health and welfare or disease control legislation.

4.0 Mitigating factors

- Prompt acknowledgement of guilt
- Making timely and appropriate compensation to the victim(s)
- Previous good character
- Age of the defendant
- Degree of culpability
- Any other factor which, considered objectively in relation to the offence, tends to extenuate the gravity of the crime even though it does not provide a defence to it.

5.0 Forms of actions

Prosecution

5.1 The Trading Standards Service recognises that a prosecution has serious implications for all involved and have developed this policy so that we can make fair and consistent decisions in all cases.

5.2 We will have regard for this policy and the Code for Crown Prosecutors. Consideration will also be given to the Compliance Code made under the Legislative and Regulatory Reform Act 2006, in particular:

- whether there is sufficient evidence that a criminal offence has been committed and there is a realistic prospect of conviction; and
- whether the prosecution is in the public interest.

5.3 In some cases prosecutions may be taken concurrently with civil proceedings e.g. prosecution in the criminal court may be reinforced and supported by action in the civil courts under the provisions of the Enterprise Act 2002.

Simple caution

5.4 Where a prosecution could succeed and the offender admits their guilt consideration will be given to dealing with the case by way of a caution.

Fixed penalty notice or a penalty notice for disorder

5.5 Where a prosecution could succeed and or the offender admits their guilt, if available, the offender may be offered a fixed penalty notice or penalty notice for disorder.

Financial investigations under the Proceeds of Crime Act 2002

5.6 The Trading Standards Service will consider and if appropriate utilise powers under the Proceeds of Crime Act 2002 (POCA), to ensure the recovery of criminal benefit or financial gain following conviction. Where investigations identify money laundering offences, we will consider prosecuting for those offences.

5.7 The Trading Standards Service will consider using restraint powers under POCA to prevent the dissipation of assets from satisfying a confiscation order and to compensate victim(s).

Undertaking

5.8 The Trading Standards Service takes a staged approach to civil redress.

5.9 Where the matters complained of are not so serious as to justify immediate civil or criminal proceedings and the offender is willing to enter into an undertaking within the meaning of the Enterprise Act 2002 not to do or continue to do the matters complained of, a formal undertaking may be sought from the offender in these terms. A breach of the undertaking will normally result in proceedings being issued.

Injunctive relief

5.10 Where an individual or business operates in such a way that it harms consumers generally, application may be made to the civil courts for an injunction to stop the detrimental activities.

Written warnings

5.11 Where consideration of the case and this enforcement policy suggests that future compliance can be achieved without resorting to

legal proceedings The Trading Standards Service will consider issuing a written warning or specific instructions as appropriate.

Suspending goods from sale

5.12 Where it is necessary to protect the public, unsafe goods will be suspended from sale using existing legislative powers.

Refusal, termination or variation of a licence/registration

5.13 The refusal, termination or variation of a licence or registration will be considered where the conditions attached to a licence or registration have not been met.

Dealing with age restricted sales

5.14 In the case of the illegal sale of alcohol to a person aged under 18 years consideration will be given to instituting a review of the premises licence.

5.15 In the case of persistent sales of alcohol from a single premises (two sales within three months) consideration will be given to the issue of a closure notice.

5.16 In the case of persistent sales of tobacco (three sales in two years) consideration will be given to either a restricted premises order and/or a restricted sale order.

Issuing financial penalties

5.17 When legislation allows, we, as the enforcement authority, may issue financial penalties to offenders.

6.0 Partnership working

6.1 Wherever practicable we will endeavour to liaise with other relevant agencies that have a joint or complementary enforcement role to ensure a consistent and coordinated approach.

6.2 Before instigating formal action, the Trading Standards Service will liaise with all relevant agencies where a joint or complementary enforcement role is identified. We subscribe to the principles of the Department for Business Innovation and Skills (BIS) Primary Authority Principle.

6.3 We will share intelligence with other enforcement agencies where this is practicable, beneficial and cost effective (subject to restrictions under the Data Protection Act, and other Trading Standards legislation)

6.4 Data sharing will be conducted through appropriate information gateways.

7.0 Complaints procedure

7.1 The Trading Standards Service operates a two stage complaints procedure, administered by the Customer Relations Team for Buckinghamshire County Council and the Customer Relations Team for Surrey County Council.

7.2 Details of the Buckinghamshire procedure can be found at:
<http://www.buckscc.gov.uk/about-your-council/contact-us/feedback-andcomplaints/>

7.3 Details of the Surrey procedure can be found at:
<http://new.surreycc.gov.uk/your-council/complaints-comments-andcompliments/how-to-make-a-complaint>

8.0 Comments

If you have any comments concerning this policy, please write to the Head of Trading Standards at:

Buckinghamshire & Surrey Trading Standards
Consort House
5-7 Queensway
Redhill
Surrey
RH1 1YB

Or email: trading.standards@bucksandsurreytradingstandards.gov.uk

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